WP(C) 5165/2006

BEFORE

THE HON'BLE MR. JUSTICE B.K. SHARMA

Heard Mr. M.U. Mondal, learned counsel for the petitioners as well as Ms. R. Chakraborty, learned State Counsel, representing the Director of Pension, Assam. I have also heard Mr. S.K. Das, learned Standing Counsel, Education Department and Mr. B. Gogoi, learned Standing Counsel, Finance Department.

The petitioner who has since retired from service on attaining the age of supperanuation in the year 2006 (1.3.2006) has filed this writ petition making a grievance against Annexure-23 letter dated 20.9.2006 addressed to the District Elementary Education Officer, Dhubri by the Director of Pension conveying the decision that refixation of pay of the petitioner was not admissible as there was no concurrence of the Finance Department. Accordingly a suggestion was made to obtain consent from the petitioner for deduction of excess payment towards granting of pensionary benefits.

The petitioner while was serving as Headmaster of the school called Jhagrapar M.V. School was favoured with stepping up of pay/equalization of pay by Annexure-12 order dated 15.7.1999 issued by the District Elementary Education, Dhubri. The said order was preceded by letter dated 15.9.1998 issued to the District Elementary Education, Dhubri by the Director of Elementary Education, Assam. By the said letter, direction was issued to take action as per the Office Memorandum dated 10.9.1997 (Annexure-10). Be it stated here that the Office Memorandum dated 10.9.1997 was issued by the Finance Department under the signature of the Commissioner & Secretary. In the said aforesaid Office Memorandum, certain criteria towards stepping up/ equalization of pay were indicated. The criteria are as follows:

1. Both that Sr. & Jr. Govt employee whose equalization/stepping up of pay is proposed should be recurlted to the same cadre post initially and should be promoted from the same source.

2. When the disparity is attributed directly due to fixation of pay under FR 22 (I) (a) (1) or under any other provision of the FRs & SRs.

No equalization/stepping up of pay is admissible in the following cases & no such cases should be referred to Finance Department:-

(i) When the pay of Jr. is fixed with the benefit of advance increment (s) sanctioned under special orders/existing provision.

(ii) When the Jr. gets pay protection for services rendered elsewhere prior to joining the present cadre post.

(iii) When a Jr. Govt. servant promoted to a higher post prior to his Sr. as per special Rules/Spl. Orders, he cannot claim equalization with his Jrs. who is in fact Sr. to him in the base post.

(iv) When disparity cropped up due to exercising option different ways for fixation of pay under provision of FR & SR promotion.

(v) When a new R.O.P. Rules come into effect, anomaly occurred prior to the date of the effect of the new pay Rules, will not be considered unless there is genuine ground for delay.

(vi) Claim of equalization will not be considered after one year of promotion in case of those for whom no pay slip from A.G. is necessary, and year from the date of receipt of the pay slip, where A.G.s pay slip in necessary for drewal of pay.

It has also come to the notice of the Govt. that equalization/stepping u

p of pay are being agreed to by subordinate authorities including District Level Officers like Inspector of Schools. It may be noted that only the authority having power to create posts, i.e. Finance Department, without whose concurrence no post can be created, has the power of equalization of pay/stepping up of pay by way of sanctioning adv. Increment. As such equalization/stepping up of pay by subordinate authorities without concurrence of Finance Department is irregular. Accountant General/ Director of Audit (LF) Assam has accordingly been requested not to accept such irregular equalization/stepping up of pay.

This restriction, however does not include advancement of date of increment of Srs. As per provision of ROP Rules, after revision of pay scale of the Govt. Employees.

(Emphasis added)

From the criteria laid down, it is seen that various parameters are to be examined by the authorities towards equalization/stepping up of pay. Further requirement was to obtain concurrence from the Finance Department towards equalization/stepping up of pay.

In the instant case, when the pay of the petitioner was stepped up by the aforesaid order dated 15.7.1999 issued by the District Elementary Education Officer, Dhubri, there was no concurrence of the Finance Department. In fact, no consultation was made with the Finance Department and even copy of the order was also not endorsed to the Finance Department. The aforesaid order dated 15.7.1999 also does not indicate as to whether the petitioner in fact was entitled to such stepping up/equalization of pay and as to how the criteria laid down in the Office Memorandum had fit into the case of the petitioner.

The aforesaid grant of equalization of pay to the petitioner was not known either to the Finance Department or to the Director of Pension. The position came to their notice only after retirement of the petitioner and when his pension papers were placed. After noticing the illegality committed in granting of equalization of pay to the petitioner, the Director of Pension raised objection to the same. The Finance Department as well as Education Department in their counter affidavits have supported the stand of the Director of Pension.

From the above narration of fact, there is no dispute that Annexure-12 order dated 15.7.1999 was passed by the District Elementary Education Officer, Dhubri in clear violation of Annexure-10 Office Memorandum dated 10.9.1997. If that be so, there is no illegality in raising objection to the same by the Director of Pension. Accordingly, there is no infirmity in the impugned order dated 20.9.2006 (Annexure-23) passed by the Director of Pension.

This now leads us to the question as to whether the case of the petitioner shall now be examined by the Finance Department. In the affidavit filed by the Finance Department, it has been stated that the Finance Department is not in a position to say whether the petitioner is eligible or not eligible for the benefit of equalization of pay with that of his junior. It has been stated that since the matter was never placed before it. However, it has been stated that it has no objection to examine the case of the petitioner, if the same is referred to it by the Education Department.

In view of the above, while not interfering with the impugned order, I dispose of the writ petition providing that the Education Department may examine the case of the petitioner as to the entitlement or otherwise of equalization of pay. However, such examination shall be in consultation with the Finance Department and upon such examination, if it is found that the petitioner is entitled to equalization of pay, same shall be granted to him. Whatever may be the outcome of the case of petitioner, the order to that effect shall be passed and shall be communicated to the petitioner. Since the petitioner has already retired from service and as stated by the learned counsel for the petitioner that he has not been provided with monthly pension, it is expected that the departmental authority shall take action in the matter as expeditiously as possible but at any rate

not later than 31.3.2008. Till then, the petitioner shall be paid provisional pe nsion without taking into account the benefit accrued to him pursuant to equaliz ation of pay.

Writ petition is disposed of.